

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Edgar Thomas,

Plaintiff,

vs.

The State of South Carolina,

Defendant.

Civil Action No. 3:17-cv-2130-CMC

ORDER

This matter is before the court on Plaintiff's complaint seeking to remove Richland County South Carolina General Sessions warrant number 2017A4010201606 and the associated state criminal action for possession of cocaine with intent to distribute to this federal court.¹ ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report"). On August 25, 2017, the Magistrate Judge issued a Report recommending this matter be summarily dismissed without prejudice and without issuance and service of process. ECF No. 7. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on September 12, 2017. ECF No. 10.

¹ Plaintiff previously filed a §1983 action seeking to remove Richland County South Carolina General Sessions warrant number 2016A4021602893 and the associated state criminal action for possession of ecstasy to this federal court. This court denied the removal and was affirmed by the Fourth Circuit. See 3:17-cv-01345-CMC-SVH, ECF Nos. 15 (Order adopting Report and dismissing Amended Complaint), 25 (USCA Opinion affirming District Court).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After considering *de novo* the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the Report's recommendation the Complaint be dismissed. Plaintiff seeks removal of his state court criminal charges to this federal court; however, he does not meet the statutory requirements to do so. Nothing in Plaintiff's objections or Complaint alters this conclusion: Plaintiff does not allege he is in the military, an officer of the United States, or has been denied his civil rights in terms of racial equality. *See State of N.C. v. Grant*, 452 F.2d 780, 782 (4th Cir. 1972). Although Plaintiff noted in his objections he would submit an amended complaint, he has failed to do so. Further, the court cannot see how an Amended Complaint in this case would not be futile, as Plaintiff has filed a nearly identical § 1983 case to remove a different Richland County General Sessions charge, and the earlier Complaint was dismissed by this court and affirmed by the Fourth Circuit. For the reasons above, the court adopts the Report and incorporates it by reference. Plaintiff's Complaint is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
October 3, 2017